Vermont Marble Company and White Pigment Corporation *and* United Steelworkers of American, AFL–CIO–CLC. Cases 1–CA–26372–1 and 1–CA–26372–2

January 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On June 18, 1990, Administrative Law Judge Stephen J. Gross issued the attached decision. The General Counsel and the Respondents filed exceptions and supporting briefs; the Charging Party filed cross-exceptions and a supporting brief; and the General Counsel filed a brief in reply to the Respondents' exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found, and we agree, that the Charging Party (the International Union) is and at all relevant times has been the sole bargaining representative of the Respondents' bargaining unit employees.[1] We therefore adopt his finding that the Respondents violated Section 8(a)(5) and (1) of the Act by ceasing to make contractually mandated payments of union dues to the International and, instead, placing those sums in escrow pending the resolution of the dispute over the identity of the employees' bargaining representative.[2]

The judge, however, dismissed the allegations that the Respondents violated Section 8(a)(5), on or about April 21, 1989, by withdrawing recognition from the International.[3] The General Counsel and the International have excepted to those dismissals. We find merit to their exceptions.

Following the mergers of Locals 22A, 26, and 30A (to which employees of Vermont Marble belonged) and 15306 (to which employees of White Pigment belonged) into Local 4, the Respondents, by letters dated April 21, 1989,[4] informed the International that they declined to recognize Local 4 as their employees' bargaining representative absent a Board-conducted election. On April 24, the Respondents filed RM petitions with the Regional Office, in which they stated that the original locals were their employees' bargaining representatives and that the mergers of those locals into Local 4 created questions concerning representation.[5] By letters dated May 5, the International's attorneys informed the Respondents that ''The bargaining agent and the contracting party for your employees has been, and will continue to be, the *International Union* and not any of the locals. Please refer to Article One of the agreement. Your company is not requested to recognize Local 4.'' (Emphasis in the original.) By letters dated May 31, however, the Respondents informed officers of Locals 26, 22A, and 15306[6] that it had always been the Respondents' position that the locals represented unit employees; that its obligation to check off union dues ended with the locals' merger into Local 4; and that, because of their dispute with the International (which contended that it was the employees' sole representative), they would place checked-off dues in escrow pending the resolution of the dispute.

We find, contrary to the judge, that by the course of conduct just described, the Respondents unlawfully withdrew recognition from the International Union. Although the Respondents only refused, in so many words, to recognize Local 4 in their April 21 letters, they made clear in their letters of May 31[7] that it was their position that the original locals were the representatives of unit employees, even though the International Union had informed them, correctly, that it, and not any of the locals, was the bargaining agent. On that basis alone, the Respondents discontinued making

[1] In adopting the judge's finding, we do not rely on *Braeburn Alloy Steel*, 202 NLRB 1127 (1973), cited in fn. 4 of the judge's decision. Contrary to the judge, it was agreed in that case that the local union was not a recognized bargaining agent, either individually or jointly with the International. In this case, whether the local unions are bargaining agents of the Respondents' employees is the principal issue to be decided.

In affirming the judge's finding, we also observe that art. XVII, sec. 3 of the International Union's constitution states that ''The International Union and the Local Union to which the member belongs shall act exclusively as the member's *agent* to represent the member in the presentation, maintenance, adjustment, and settlement of all grievances and other matters relating to terms and conditions of employment or arising out of the employer-employee relationship.'' (Emphasis added.) Although that language would be consistent with a finding that the International and the local unions were joint representatives of the Respondents' employees, it is equally consistent with the judge's finding that the locals here function, in effect, as the International's agents and not as representatives in their own right.

The judge adverted to an incident in which local bargaining committee members clashed with the International representative over a contract proposal. Contrary to the judge's indication, that episode took place in negotiations with Vermont Marble, not White Pigment. We correct this inconsequential error.

[2] As is fully set forth in the judge's decision, the locals to which the employees formerly belonged were merged into a different local, Local 4, in early 1989. The Respondents contend that the mergers created questions concerning representation. The judge found, however, that the International alone was the bargaining representative, and therefore, in effect, that the mergers effected no change in the identity of the bargaining representative and that no question concerning representation had been raised.

[3] The judge stated that the General Counsel had not pursued those allegations in his brief. We disagree. Although the General Counsel's brief to the judge contained virtually nothing in the way of argument or analysis on this point, it specifically stated that the withdrawal of recognition was an issue for the judge to decide.

[4] All dates are in 1989.

[5] Case 1–RM–1208 (White Pigment) and Case 1–RM–1209 (Vermont Marble). Both petitions have since been dismissed under the Board's blocking charge rule.

[6] Each letter also bears the inscription ''cc: Mr. Francis Farrell.'' Francis Farrell is the International Union staff representative who attended the most recent negotiations with the Respondents. It thus appears that the International was notified of the Respondents' positions set forth in their May 31 letters.

[7] As they had in their RM petitions filed with the Regional Office.

the contractually required dues payments to the International, which, as we have found, was the sole representative. The Respondents' insistence that only the original locals, either individually or jointly with the International, were their employees' bargaining representatives was tantamount to a refusal to recognize any other entity, including the International, as the exclusive representative. The refusal to recognize the International violated Section 8(a)(5) and (1).[8]

Having found that the Respondents unlawfully withdrew recognition from the International Union, we shall amend the judge's recommended Order to require the Respondents to cease and desist and, on request, to recognize and bargain with the International Union as the exclusive representative of employees in the appropriate units.[9]

ORDER

The National Labor Relations Board orders that the Respondents, Vermont Marble Company, Proctor, Vermont, and White Pigment Corporation, Florence, Vermont, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully failing to remit to the United Steelworkers of America, AFL–CIO–CLC (the International), dues withheld from employees' pay pursuant to valid dues-checkoff authorizations.

(b) Failing and refusing to recognize the International as the exclusive bargaining representative of the employees of the Respondents in the units found appropriate.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the International as the exclusive representative of the employees in the following appropriate units concerning terms and conditions of employment:

> (1) All hourly paid production and maintenance employees employed by White Pigment at its Florence, South Wallingford, and New Haven, Vermont plants, including truck drivers, but excluding office clerical employees, technical employees, over-the-road truck drivers under private contract, guards and supervisors as defined in the Act.
>
> (2) All full-time production, maintenance, and power employees of Vermont Marble Company at its Center Rutland, Danby, Proctor, Weybridge, and New Haven, Vermont facilities, including core drill operators, truck drivers, and automobile repairmen, but excluding chauffeurs, office janitors, office clerical employees, guards and supervisors as defined in the Act.

(b) In the manner set forth in the remedy section of the judge's decision, remit to the International, with interest, the dues they withheld, or should have withheld, from their employees' pay, but which they did not remit to the International.

(c) Post at each of their facilities in Vermont copies of the attached notice marked ''Appendix A'' (in the case of Vermont Marble) or ''Appendix B'' (in the case of White Pigment).[10] Copies of the notices, on forms provided by the Regional Director for Region 1, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

[8] The judge apparently dismissed the withdrawal of recognition allegations because he found no evidence that the Respondents withdrew recognition on April 21. We think that is an unnecessarily narrow reading of the complaint allegations and the evidence in this case. In the first place, the complaint alleges that recognition was withdrawn *on or about* April 21, not *on* that date, as the judge stated. More important, although the Respondents' April 21 letters did not, in themselves, state a refusal to recognize the International, they were the first links in a chain of conduct that clearly constituted withdrawal of recognition from the International. That the import of the Respondents' actions probably did not become clear to the International until later does not mean that the withdrawal of recognition had not been set in train around April 21, as the complaint alleges. In any event, a discrepancy of only a few weeks between the date on which the complaint alleges a violation occurred and the date on which the evidence establishes the violation did occur will not in itself prejudice the Respondent. See *Siracusa Moving & Storage*, 291 NLRB 143 (1988). Thus, even if we were to find that the withdrawals of recognition did not actually occur until late May, we still would find them comprehended by the language of the complaint.

[9] The judge inadvertently excluded from his recommended Order the requirement that the Respondents notify the Regional Director of the steps they have taken to comply. We shall include such a provision in our amended Order.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unlawfully fail to remit to the United Steelworkers of America, AFL–CIO–CLC (the International), dues that we withheld or should have withheld from employees' pay pursuant to dues-checkoff authorizations.

WE WILL NOT fail and refuse to recognize the International as the exclusive representative of our bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL remit to the International, with interest, the dues that we withheld, or should have withheld, from our employees' pay and that we should have, but did not, pay to the International.

WE WILL recognize and, on request, bargain with the International as the exclusive representative of employees in the following appropriate unit:

> All hourly paid production and maintenance employees at our Florence, South Wallingford, and New Haven, Vermont plants, including truck drivers, but excluding office clerical employees, technical employees, over-the-road truck drivers under private contract, guards and supervisors as defined in the Act.

WHITE PIGMENT COMPANY

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unlawfully fail to remit to the United Steelworkers of America, AFL–CIO–CLC (the International), dues that we withheld or should have withheld from employees' pay pursuant to dues-checkoff authorizations.

WE WILL NOT fail and refuse to recognize the International as the exclusive representative of our bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL remit to the International, with interest, the dues that we withheld, or should have withheld, from our employees' pay and that we should have, but did not, pay to the International.

WE WILL recognize and, on request, bargain with the International as the exclusive representative of employees in the following appropriate unit:

> All full-time production, maintenance, and power employees at our Center Rutland, Danby, Proctor, Weybridge, and New Haven, Vermont facilities, including core drill operators, truck drivers, and automobile repairmen, but excluding chauffeurs, office janitors, office clerical employees, guards and supervisors as defined in the Act.

VERMONT MARBLE COMPANY

Michael Fitzsimrnons, Esq., for the General Counsel.
Ellen Kearns, Esq. and *David S. Rubin, Esq. (Kearns & Associates)*, of Boston, Massachusetts, for the Respondents.
Shailah T. Stewart, Esq. (Angoff, Goldman, Manning, Pyle, Wanger & Hiatt), of Boston, Massachusetts, for the Charging Party.

DECISION

STEPHEN J. GROSS, Administrative Law Judge. This case presents the issue of whether, as of 1989, the United Steelworkers of America (the Internatonal) alone was the collective-bargaining representative of the bargaining unit employees at Vermont Marble Company and White Pigment Company, or whether the employees at each of those two companies were represented jointly by the International and certain local unions. If the International alone was the collective-bargaining representative, then, for reasons that will be discussed below, both Vermont Marble and White Pigment (collectively the Respondents) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). If the International and the local unions jointly represented the Respondents' employees, neither of the Respondents violated the Act in any respect.[1]

For the reasons set out in the following pages, my conclusion is that the International alone was, and is, the exclusive bargaining representative of the Respondent's bargaining unit employees.

Although the General Counsel's cases against White Pigment and Vermont Marble are remarkably similar, it will make for easier reading to discuss them separately. I accordingly first turn to the General Counsel's claim that White Pigment violated Section 8(a)(5).

The General Counsel's Case Against White Pigment

White Pigment is in the business of grinding marble into powder. (The powder is used in the manufacture of paints, plastics, paper, and foodstuffs.) White Pigment has facilities in Florence and New Haven, Vermont. The Company's bargaining unit employees are members of Steelworkers Local 15306.[2]

[1] The International filed unfair labor practice charges against Vermont Marble in Case 1–CA–26372–1 and against White Pigment in Case 1–CA–26372–2 on May 11, 1989, and amended its charges on June 22. The complaint dated July 11, 1989, was amended at the hearing. The Respondents admit that they are employers engaged in commerce for purposes of the National Labor Relations Act (the Act) and that the International is a labor organization. I heard the case in Proctor, Vermont, on February 7, 1989. Briefs have been filed by the General Counsel, by the International, and by the Respondents. The Respondents have filed an unopposed motion to correct the transcript. I grant the motion.

[2] The bargaining unit consists of:

Continued

Early in 1989 the International merged Local 15306 into a much larger Steelworkers' local, Local 4. The International merged the two locals without providing the members of Local 15306 with the procedural safeguards that the Board requires. Further, White Pigment contends, and the General Counsel and the International do not dispute, that there is no substantial continuity between premerger Local 15306 and postmerger Local 4. (See generally *NLRB v. Food & Commercial Workers Local 1182*, 475 U.S. 192 (1986).) Thereafter White Pigment advised the International that the Company would not recognize Local 4 as a bargaining representative of its employee, and White Pigment began escrowing the union dues it collected from its employees (pursuant to checkoff authorizations) rather than forwarding the moneys to the International.

The General Counsel and the International agree that if Local 15306 was a bargaining representative of the White Pigment employees, whether alone or jointly with the International, at the time of its merger into Local 4, a question concerning representation arose and White Pigment lawfully could refuse to bargain further with either Local 4 or the International. But the General Counsel and the International take the position that the International alone was (and is) the exclusive bargaining representative of the Company's bargaining unit employees. If that is the case, then Local 15306's merger into Local 4 is beside the point insofar as White Pigment's obligations are concerned.

Contract Provisions

Two collective-bargaining contracts covering White Pigment's bargaining unit employees are in evidence. One is for the period 1984–1987 (the 1984 contract) and the other for the period 1987–1990 (the 1987 contract). Both contracts refer to a Board ''certification of representative dated May 8, 1963.'' Unfortunately, the record tells us nothing about what that certification says.

That means that a determination of who represents the White Pigment employees—just the International, or the International jointly with Local 15306—is going to have to be based on: (1) the language of the contracts themselves; and (2) other evidence describing the various relationships between White Pigment, the International, and Local 15306. (The General Counsel contends that the parol evidence rule renders immaterial evidence outside the 1987 contract. I will discuss that contention later in this decision.)

The first thing about the 1984 and 1987 contracts is their covers. And the covers of both contracts read: ''Agreement between White Pigment Corporation and United Steelworkers of America, AFL–CIO–CLC.''

Then, turning to the first page of text (of both contracts), the contacts read:

> AGREEMENT
>
> This Agreement made and entered into this [date] by and between WHITE PIGMENT CORPORATION, hereinafter referred to as ''the Company,'' and UNITED STEELWORKERS OF AMERICA AFL–CIO–CLC, hereinafter referred to as ''the Union.''
>
> WITNESSETH
>
> The Company and the Union hereby agree as follows:
>
> ARTICLE I—RECOGNITION
>
> Section 1. The Company recognizes the Union as the sole exclusive representative for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, of all [bargaining unit] employees . . . .

The Respondents' arguments in response to that language take two tacks. One is that other language of the White Pigment collective-bargaining contracts themselves shows that the words ''United Steelworkers of America AFL–CIO–CLC'' (and, therefore, the term the Union), as used in those contracts, includes Local 15306, along with the International. The other is that even if the words of the contracts do not so indicate, evidence about collective bargaining and grievance processing shows that Local 15306 is in fact a collective-bargaining representative of the bargaining unit employees.

What does ''United Steelworkers of America'' mean, as used in the White Pigment collective-bargaining contract? In my decade or so of hearing cases arising under the Act, I have never come across a collective-bargaining agreement that refers to the ''United Steelworkers of America'' (or to the United Mine Workers of America, or the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, etc.), and that does not specify a local union, in which the parties intended the reference to be to a local union along with (or instead of) the International union. The Respondents have not pointed to any. And any perusal of Board cases will show that where the parties to a contract want to refer to a local union, they say so, including where they want to refer jointly to an international union and a local union.[3] In Industrial America, that is to say ''United Steelworkers of America'' means the International alone; it does not mean the International and one or more local unions.[4]

Perhaps I should now simply conclude that the International was the exclusive collective-bargaining representative of White Pigment's bargaining unit employees and that, accordingly, White Pigment violated Section 8(a)(5). But instead, I am going to assume that the parties to the 1984 and 1987 contracts might conceivably have intended that Local 15306 be a collective-bargaining representation of White Pigment's employees even though the contracts state that White Pigment's recognizes the ''United Steelworkers of America, AFL–CIO–CLC,'' as the ''sole exclusive representative'' of the employees, and even though ''United Steelworkers of

All production and maintenance employees employed at White Pigment's Florence, South Wallingford, and New Haven, Vermont plants, including truck drivers, but excluding office clerical employees, technical employees, over-the-road truck drivers under private contract, guards and supervisors as defined in the Act.

[3] See, e.g., a case cited by the Respondents, *BASF-Wyandotte Corp.*, 276 NLRB 498, 599 (1985). It involved joint representation by an international union and a local union, and the collective-bargaining agreement specifically referred to both the international union and the local union.

[4] See, e.g., *Braeburn Alloy Steel*, 202 NLRB 1127 (1973), a case involving both the Steelworkers International Union and a Steelworkers local union. The Board there simply assumed that ''the United Steelworkers of America, AFL–CIO,'' meant only the International.

America, AFL–CIO–CLC,'' in all other contexts invariably refers to the International, exclusively.

Distinctions in the contracts between ''union and International Union'' Given the definition of ''the Union,'' as quoted earlier, one might expect a contract provision requiring the Company to remit checked-off union dues to the International's treasurer to refer to ''the Treasurer of the Union.'' Instead the contracts refer to ''the International Treasurer'' (art. 15[5]). Similarly the contracts provide for the right of visitation to White Pigment's facilities ''by International Union representative'' (art. 16).

But it is in reference to grievance processing that the contract language is most startling. According to article 9 of the contracts, the second step of the grievance process involves ''the Union representative.'' But the third step involves ''the Union representative and the International Union representative.'' Finally, ''If the Company has any grievance or complaint it may take it up with the Internatiolnal Union representative.''

The references to ''the International Union'' constitute, to say the least, inelegant drafting, given the earlier definition of ''the Union.'' And one way to make sense out of the ''Union''-''International Union'' phraseology in the quoted passages is to conclude that employees are represented by both the Local and the International. But that interpretation makes nonsensical the contract's definition of ''the Union.''

A second approach to interpreting the provisions at issue is to assume that, for some purposes, members of the Local may serve as agents of the International in respect to matters affecting the Local's members. Once that is assumed, then the reason for the distinctions in the contract between ''Union representative'' and ''International Union representative'' becomes obvious. Those distinctions merely represent the contract's inartistic way of specifying when something must be done by an official of the International rather than by a member of the local whom the International authorized to act on the International's behalf.

The International's constitution is relevant in this respect. Article XVII of the International's constitution states that ''the International Union shall be the contracting party in all collective-bargaining agreements.'' But the constitution (in the same article) also provides that the ''International Union and the Local Union to which the member belongs shall act exclusively as the member's agent to represent the member in . . . all grievances.''[6] The contract language referring to ''Union'' and ''International Union'' representatives obviously stems from the role in grievance processing that the International's constitution gives to the local.[7]

I conclude that the references in the 1984 and 1987 contracts to ''the International Union,'' as distinct from ''the Union,'' do not require me to find that the parties intended the Local to be a joint representative of the employees, along with the International. It is true that those references would be consistent with such an intention. But they are also consistent with an intention on the parties' part that members of Local 15306 from time to time serve as agents of the International.

The Signature Pages of the 1984 and 1987 Contracts

The Respondents contend that the signature pages of the 1984 and 1987 contracts show that Local 15306 represented the bargaining unit employees jointly with the International.

The 1984 Contract

Recall that the first page of text of the 1984 contract specifies that the agreement is between White Pigment and the United Steelworkers of America, that the Company recognizes ''the Union as the sole exclusive representative for the purpose of collective bargaining'' and ''the Union,'' in turn, is defined as the United Steelworkers of America. Under these circumstances, if the signature page of the contract were to evidence joint representation by the International and Local 15306, the writing on the page would in the very least have to specify that Local 15306 was a party to the contract and that the officials of the Local signed the contract as such and not as agents of the International.

The signature page of the 1984 contract looks like this (with capitalization as in the original):

> IN WITNESS WHEREOF, this Agreement is executed in duplicate originals on the day above written on behalf of the Company by its duly authorized representative and on behalf of the Union by its duly authorized representatives.
>
> United Steelworkers of America, AFL–CIO–CLC
>
> | | |
> |---|---|
> | United Steelworkers of America
AFL–CIO–CLC | White Pigment Corporation |
> | _____
[name]
International President | By_____
[name], President |
> | _____
[name]
International Secretary | Local Union 15306 Committee |
> | _____
[name]
International Treasurer | _____
[name] |
> | _____
[name]
International Vice President
(Administration) | _____
[name] |

[5] References to the White Pigment contracts will be to both the 1984 and 1987 contracts unless otherwise specified.

[6] The International may, of course, properly confer on a local union the authority to act as its agent on matters relating to the representation of unit employees. *Rath Packing Co.*, 275 NLRB 255 (1985).

[7] The International's penchant for using the undefined term ''the International Union'' as distinguished from ''the Union,'' in contracts that define ''the Union'' to mean the International has led to other judicial headscratching. See *L. O. Koven & Bro. v. Steelworkers Local 5767*, 250 F.Supp. 810, 813 (D.N.J. 1966).

_____	_____
[name]	[name]
International Vice President (Human Affairs)	
_____	
[name]	
Director, District One	
_____	
[name]	
Sub-District Director	

As I read that writing, it specifies that everyone who signed the contract (except for White Pigment's president) signed it as a ''duly authorized representative'' of the United Steelworkers of America, AFL–CIO–CLC.[8] Further, no one signed the contract as an official of Local 15306. Rather, four persons signed as members of the ''Local Union 15306 Committee,'' and they did so without indicating their official position in the local. (In contrast, the seven officials of the International who signed the contract did so over their titles.)

In sum, the signature page of the '84 contract amounts to further evidence that only the International was the collective-bargaining representative of White Pigment's bargaining unit employees.[9]

The 1987 Contract

The signature page of the 1987 contract is set up the same way as the 1984 contract except that there is no ''UNITED STEELWORKERS OF AMERICA, AFL–CIO–CLC'' on a line by itself following ''authorized representatives.''[10] Thus, there is this sentence (which is identical to the 1984 contract):

> IN WITNESS WHEREOF, this Agreement is executed in duplicate originals on the day above written on behalf of the Company by its duly authorized representative and on behalf of the Union by its duly authorized representatives.

And following that there are signatures under ''United Steelworkers of America, AFL–CIO–CLC,'' ''White pigment Corporation'' and ''Local Union 15306 Committee.'' And again, officials of the International signed over their titles, persons signing as the Local Union 15306 Committee did not show titles.

Since ''the Union'' is defined to mean the International (as discussed earlier), the signature page of the 1987 contract, like that of the 1984 contract, shows that, except for White Pigment's president, everyone who signed the contract signed it as a ''duly authorized representative'' of the International.

Bargaining Practice

The Respondents contend that the joint representative status of Local 15306 is shown by the way bargaining was conducted. That contention starts from the premise that there is a test for joint representation that goes this way, in situations in which the contract means an international union as the employees' collective-bargaining representative:

> (1) Look to see to what extent members of the local participated in contract negotiations and to what extent they, rather than any international officials, were responsible for the positions taken on behalf of the employees.
>
> (2) If any members of the local were sufficiently active during the negotiating process, and/or if on some occasions they, not the international official(s), dominated that process, that means that the local union represents the employees jointly with the international union.

The Respondents' initial problem is that there is no such test. In fact, where an international union is named as the exclusive bargaining representative of unit employees, the international remains as such even if the local conducts all the contract bargaining. *Rath Packing Co.*, 275 NLRB 255 (1985); cf. *Appleton Electric Co.*, 105 NLRB 666, 668 (1953).

The Respondents' other problem is that the participation in the bargaining process by the members of the ''Local Union 15306 Committee'' is entirely consistent with their being agents of the International for that purpose, as the signature pages of the contracts say they are. The committee members convinced White Pigment to agree to contract terms that addressed issues of local concern and that, clearly, were not on the International's agenda. In at least one instance, moreover, where the committee members vehemently clashed with an International official about a proposed contract provision, the provision preferred by the committee found its way into the contract. But an International official was at all bargaining sessions, and he clearly headed the union delegation. And there is no evidence that any committee member ever proposed any contract provision over the International official's objection.[11]

Other Relationships Between White Pigment and Local 15306

As a White Pigment official testified, ''labor relations was out there on the floor with the men. It had to be done everyday. Questions come up, we'd go and settle them then. I never dealt with an International rep on any weekly, monthly, or quarterly basis. It was done with the local people.''

[8] That tallies with the testimony of an International representative that the members of the Local 15306 committee who participated in the bargaining ''are duly elected representative[s] of the United Steelworkers of America along with myself.''

[9] Even had the page not been clear that the committee members were signing as representatives of the Internatinal, and even had those committee members all been officials of Local 15306 and signed it as such, that still would not be proof that the Local was a joint collective-bargaining representative. See *North American Phillips Co.*, 78 NLRB 666, 668 (1948) (the contract stated that a local union was sole bargaining representative; the Board deemed the International to be ''merely a nominal party'' to the contract despite the signature on the contract of an International official in his official capacity).

[10] Pages are mixed up in the 1987 contract (G.C. Exh. 4). (An attempt was made at the hearing to straighten things out. See Tr. 46. But it was not quite right.) There are two signature pages in the document, pp. 19 and 20. But the signatures on p. 19 relate to the pension plan on pp. 21–22. The signatures that relate to the collective-bargaining contract are on page 20. (that is clear both from an examination of pp. 18–22, and from a comparison of the 1987 contract with the 1984 contract.)

[11] The International official who headed the union negotiating team testified at one point that ''the local itself can override my objection and vote to accept the proposals. It's not unusual.'' But it turns out that he was referring to the right of the members of the Local to vote on whether to accept a proposed contract.

Thus, for example, on safety matters company officials deal with plant safety representatives selected by the Local—even though article 11 of the 1984 and 987 contracts requires the Company to ''confer with the Union regarding safety.''

Evidence of that nature would be significant if the contract did not specify that the International was the exclusive bargaining representative responsibilities, along with the International. But given that the contract does specify that the International is the exclusive bargaining representative, that evidence shows only that the International permits members of Local 15306 to act as agents of the International.

Other Matters

I already touched on the fact that the International's constitution specifies that the International ''shall be the contracting party in all collective-bargaining agreements.'' That, it seems to me, is further evidence that Local 15306 does not jointly represent the Company's employees.

The Parol Evidence Rule

The issue in this case involves an alleged ambiguity about who the parties are to a contract. No one has cited me to any authority indicating that the restrictions of the parol evidence rule apply where that is the question to be resolved. I decline to broaden the reach of that rule to cover that issue.[12]

Conclusion—White Pigment

Article 15 of White Pigment's collective-bargaining contract with the International refers to union dues deducted by the Company pursuant to employee authorizations. As noted earlier, the provision requires the Company to ''remit all sums so deducted to the International Trasurer.'' Beginning on or about May 31, 1989, White Pigment has not done that. Instead the Company has placed such sums in an escrow account. The Company has thereby violated Section 8(a)(5) and (1).

The complaint alleges that White Pigment also violated the Act on April 21, 1989, in that, on that date, ''Respondent White withdrew its recognition of the union.'' But the General Counsel does not make the same contention on brief—properly, since there is no evidence that the Company withdrew recognition of the International on that date. I accordingly will recommend that the allegation be dismissed.

The General Counsel's Case Against Vermont Marble

Vermont Marble mines and mills marble and generates and distributes electric power at facilities at various locations in Vermont. As of early 1989 its bargaining unit employees were members of Steelworkers Locals 22A, 26, 30A. But then those locals merged into Steelworkers Local 4.[13] As was the case with Local 15306's merger into Local 4, the mergers were accomplished without providing the members with the procedural safeguards the Board requires, and there was no substantial continuity as between Locals 22A, 26, and 30A, on the one hand, and Local 4, on the other.

Vermont Marble's response to the mergers tracked White Pigment's. On April 21, 1989, Vermont Marble advised the International that it would not recognize Local 4. And in May Vermont Marble escrowed the union dues it collected from its employees.

Vermont Marble's collective-bargaining contracts, like White Pigment's, state that they are with the International, define ''the Union'' to mean the International, and state that Vermont Marble recognizes ''the Union'' as the exclusive representative for all bargaining unit employees.[14]

In all other respects too, there is no material difference between Vermont Marble's contracts and White Pigment's as far as showing whether the International is the sole collective-bargaining representative.[15] That similarly between Vermont Marble's situation and White Pigment's further obtains in regard to the nature of the relationship between the ''Local Union Committee'' and the International during bargaining over new contracts and in grievance processing.

There is one matter that applies to Vermont Marble and not to White Pigment which bears mention. As touched on above, until 1989 Vermont Marble's bargaining unit employees were divided into three locals unions. Yet as far as the record shows, at all times only one collective-bargaining contract covered all those employees.[16] Moreover no officer of any local union signed any of the contracts on behalf of his local. Rather, five or six employees, some of whom were officers of the locals and some of whom were not, signed merely as members of the ''Local Union Committee.'' Thus, if one had to search for one or more entities to represent Vermont Marble's employees jointly with the International, it would have to be the ''Local Union Committee,'' rather than the local unions themselves.

I accordingly conclude that the International is the exclusive collective-bargaining representative of Vermont Marble's bargaining unit employees and that Vermont Marble therefore violated Section 8(a)(5) and (1) of the Act when it placed checked-off union dues into an escrow account rather than paying them over to the International in accordance with the terms of its collective-bargaining contract with the International.

REMEDY

The recommended Order requires the Respondents to remit to the International the moneys that the Respondents have withheld from their employees' paychecks, pursuant to dues-checkoff authorizations, since about May 31, 1989, together

[12] See *Kal Kan Foods*, 288 NLRB 590, 593 (1988), for a discussion of the use of the parol evidence rule in Board cases.

[13] Actually Locals 26 and 30A merged just before the merger into Local 4. But Vermont Marble did not object to the Locals 26–30A merger, and that merger has no bearing on the outcome of this proceeding.

[14] The record includes copies of three Vermont Marble collective-bargaining contracts, one for the years 1981–1984, one for 1984–1987, and one for 1987–1990.

[15] The signature page of the current Vermont Marble collective-bargaining contract is set up slightly differently from White Pigment's and the way it is set up could be interpreted as indicating that the ''Local Union Committee'' is a party to the contract, along with the Internation and Vermont Marble. But the signature pages of earlier Vermont Marble contracts are set up the way White Pigment's are. And the record is barren of any evidence that the change was intended to reflect a change in the identity of the parties to the contract.

[16] Those employees, in turn, are all members of the same bargaining unit:

> All full-time production, maintenance and power employees of the Company at Center Rutland, Danby, Proctor, Weybridge and New Haven, Vermont, including core drive operators, truck drivers, and automobile repairmen, but excluding chauffeurs, office janitors, office clerical employees, guards and supervisors as defined in the Act.

with interest on those moneys, with interest computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]